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STATE OF MICHIGAN

IN THE COURT OF APPEALS

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RENITA A. JOHNSON-LEVA,

Claimant/Appellant,

v

COA No. 258622

BIOPORT CORPORATION,
a Michigan Corporation,

Lower Court No. 03-002183 NZ

Respondent/Appellee.

Vercruysse Murray & Calzone, P.C.
By: Patricia Bordman (P43947)
31780 Telegraph Road, Suite 200
Bingham Farms, MI 48025
(248) 540-8019
Attorneys for Respondent/Defendant

Black Law Offices
By: Randie K. Black (P43555)
1422 W. Saginaw Street
East Lansing, MI 48823
(517) 324-1100
Attorney for Claimant/Plaintiff

**RESPONDENT/APPELLEE BIOPORT CORPORATION'S RESPONSE TO
PLAINTIFF/APPELLANT'S MOTION TO STRIKE AND SANCTION**

Claimant/Appellant Renita Johnson-Leva's ("Claimant") motion seeks to strike seven exhibits¹ attached to Respondent/Appellee BioPort Corporation's ("BioPort") Response Brief on Appeal. Claimant waived objection to six of these exhibits (Nos. 7, 8, 9, 12, 13 and 18) by failing to object below and in this Court when these same exhibits were attached to other pleadings filed by BioPort. To preserve a claim for appellate review, Claimant should have objected in the trial court. Failure to do so constitutes a forfeiture of the claim on appeal. *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Furthermore, "[a] party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Blazer*

¹ Nos. 7, 8, 9, 12, 13, 14 and 18.

Foods, Inc v Restaurant Properties, Inc, 259 Mich App 241, 252; --- NW2d ---- (2003), quoting *Living Alternatives for the Developmentally Disabled, Inc v Dep't of Mental Health*, 207 Mich App 482, 484; 525 NW2d 466 (1994).

For example, Claimant failed to object in this Court when BioPort attached Exhibits 7² and 18³ as Exhibits 10 and 18 to BioPort's Response to Claimant/Appellant's Motions to Amend/Add the Alleged Subsequent Circuit Court Order, Immediately Consider and Release Claimant/Appellant's Money Held by Circuit Court and Peremptorily Reverse. Nor did she object below when BioPort attached Exhibit 7 as Exhibit 3 to its Response to Claimant's Amended Application to Review and Correct Arbitration Award.

Similarly, Claimant failed to object when in the Circuit Court BioPort attached Exhibit 8⁴ as Exhibit 11 to its Response to Claimant's Amended Application to Review and Correct Arbitration Award.

Likewise, Claimant did not object below when BioPort attached Exhibits 9,⁵ 12⁶ and 13⁷ as Exhibits 2, 7 and 8 to its Motion for Interpleader and/or Seeking a Court Order Authorizing the Court Clerk to Accept Arbitration Award Proceeds.

Thus, Claimant waived her objections when she failed to object at the time that these same exhibits were offered in previous pleadings filed with the Ingham County Circuit Court and with this Court. See *Booth Newspapers, Inc v Univ of Michigan Bd of Regents* and *Blazer Foods, Inc v Restaurant Properties, Inc*, both *supra*.

² Exhibit 7 is a page from Claimant's Brief where she stated that the arbitration was "full and fair."

³ Exhibit 18 is a facsimile dated October 13, 2004, from Randie Black to Thomas Kim, Ingham County Circuit Court Officer.

⁴ Exhibit 8 is Arbitrator's Disposition of Application for Modification of Award.

⁵ Exhibit 9 is Randie Black's former co-counsel Tracy Kornak's correspondence dated May 28, 2003, to Arbitrator Kotzian

⁶ Exhibit 12 is Kornak's correspondence dated December 31, 2003, to Respondent's counsel Patricia Bordman.

⁷ Exhibit 13 is Bordman's correspondence dated January 6, 2004, to Kornak.

Furthermore, Claimant offers no supporting authority for her request to strike exhibits, an omission that precludes review by this Court. See *Arrand v Graham*, 297 Mich 559, 564 (1941)(the mere statement of a position without argument or citation of authority in support thereof is insufficient to present a question for review); see also *Magee v Magee*, 218 Mich App 158, 161 (1996) (where a party cites no case law or other authority for an argument the issue is abandoned); *Sanchez v Lagoudakis*, 184 Mich App 355, 357-358 (1990)(where a party fails to sufficiently brief or argue an issue, the court declines to address same). Indeed, by failing to include supporting authority, Claimant has abandoned this argument. See *Tringali v Lal*, 164 Mich App 299, 305 (1987)(“arguments without supporting authority are considered to be abandoned on appeal)

Moreover, Claimant’s objections, that the exhibits are “absolutely untrue” and “irrelevant,” among her other objections that are inflammatory, without merit but which BioPort will not address in this response, are puzzling for two reasons. The objections are puzzling because none of the objected to exhibits were created by BioPort for its use on appeal;⁸ each of the exhibits is either an arbitral order, letter, facsimile or brief page from the case below.⁹ The objections are also puzzling because each of the exhibits supports the events that occurred during the course of this litigation and which BioPort included in the Counter-Statement of Facts to its Response to Claimant’s Brief on Appeal, and are, therefore, both true and relevant.

⁸ The only exception is Patricia Bordman’s Affidavit which was originally drafted to support BioPort’s Counter-Statement of Facts in its Response to Claimant/Appellant’s Motions to Amend/Add the Alleged Subsequent Circuit Court Order, Immediately Consider and Release Claimant/Appellant’s Money Held by Circuit Court and Peremptorily Reverse.

⁹ Exhibit 8 is an arbitral Order, Exhibits 7 and 18 are documents authored by Claimant’s counsel and Exhibits 9, 12 and 13 are correspondence between counsel.

By persisting in seeking the immediate release of the arbitral funds,¹⁰ Claimant has placed at issue her counsel's dispute with Tracey Kornak, BioPort's resultant Motion for Interpleader and her counsel's *ex parte* communication with the circuit court. Consequently, each exhibit about which she objects is not only relevant, it is necessary to BioPort's defense. That Claimant's counsel is experiencing discomfort related to these exhibits, however, is an insufficient justification for Claimant to bring this motion seeking to strike the legitimate exhibits which have been offered by BioPort as support in its previous briefs both in this Court and in the lower court. In fact, Claimant's present motion is just one of a series of frivolous and time-wasting motions that she has filed in this Court.¹¹

RELIEF SOUGHT

BioPort requests that this Court not only deny this frivolous and unwarranted motion, but also award to BioPort its costs and attorney's fees for having to respond.

Respectfully submitted,

VERCRUYSSSE MURRAY & CALZONE, P.C.

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Dated: April 9, 2005.

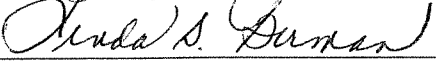
¹⁰ Indeed, simultaneous with filing the herein motion, Claimant also filed a Motion for Rehearing/Clarification in which, among other things, she seeks reversal of this Court's denial of the immediate release of the arbitral funds being held pursuant to MCR 7.208(D) by the Ingham County Circuit Court.

¹¹ Claimant also filed in this Court a Motion to Amend seeking to add a "subsequent" Circuit Court Order, knowing that the Circuit Court had not issued a subsequent order, and a Motion for Preemptory Reversal, both of which this Court denied. Claimant also filed a Motion for Rehearing/Clarification, as stated in n 10, *infra*.

PROOF OF SERVICE

I served a copy of the above document on
Randie K. Black by two-day overnight mail
on April 11, 2005.

I declare that the statements above are true
to the best of my knowledge.

A handwritten signature in cursive script, reading "Linda S. Berman", written over a horizontal line.

Linda S. Berman